

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re ALLIED NEVADA GOLD CORP., SECURITIES LITIGATION)	Case No. 3:14-cv-00175-LRH-WGC
)	<u>CLASS ACTION</u>
This Document Relates To:)	ORDER GRANTING PRELIMINARY
ALL ACTIONS.)	APPROVAL OF PROPOSED
)	SETTLEMENT, GRANTING
)	CONDITIONAL CLASS
)	CERTIFICATION, AND
)	PROVIDING FOR NOTICE TO THE
)	CLASS

This above-entitled action (the “Action”) comes before this Court (the “Court”) on Lead Plaintiff’s Motion for: (1) Preliminary Approval of Proposed Settlement; (2) Certification of the Class for Purposes of Settlement; (3) Approval of Notice to the Class; and (4) Scheduling of a Settlement Hearing (“Motion”) and on the Stipulation of Settlement dated January 24, 2020 (“Stipulation”) entered into by Lead Plaintiff and the Defendants in the Action. The Court has reviewed the Motion, the Memorandum, and the Stipulation with the attached exhibits, which set forth the terms and conditions for a proposed settlement of and for dismissal of the Action with prejudice, upon the terms and conditions of the Stipulation, and finds that the Motion should be granted.

1 All defined terms used in this Order shall have the same meanings as set forth in the
2 Stipulation unless expressly indicated otherwise herein.

3 **NOW, THEREFORE**, the Court hereby **ORDERS**:

4 1. The Court does hereby preliminarily approve the Stipulation and the Settlement set
5 forth therein, including the releases contained therein, as being fair, reasonable, and adequate as
6 to the Class Members, subject to further consideration at the Settlement Hearing described below.
7 Therefore, the motion for preliminary approval of the proposed Settlement is **GRANTED**.
8

9 2. For purposes of settlement only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), the
10 Court hereby certifies a Class consisting of all Persons who purchased Allied common stock in the
11 United States or on a securities exchange in the United States during the Class Period. Excluded
12 from the Class are: (i) Allied, its predecessors, successors, and subsidiaries; (ii) Defendants; (iii)
13 the officers and directors of Allied during the Class Period; (iv) members of the immediate families
14 of any Defendant; (v) any firm, trust, corporation, or entity in which any Defendant has a
15 controlling interest; and (vi) the heirs, successors, and assigns of any Person excluded from the
16 Class pursuant to Paragraph 1.5 of the Stipulation. Also excluded from the Class is any Class
17 Member who validly and timely requests exclusion in accordance with the requirements set by the
18 Court.
19

20 3. Solely for the purposes of effectuating the Settlement, the Court finds and
21 concludes that the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3) of the Federal Rules of Civil
22 Procedure have been satisfied, as follows:
23

24 (a) the members of the Class are so numerous that joinder of all members
25 is impracticable;

26 (b) there are questions of law and fact common to the Class;
27
28

1 (c) the claims and defenses of the representative parties are typical of the
2 Class;

3 (d) the representative parties will fairly and adequately protect the interests
4 of the Class; and

5 (e) the Action satisfies the requirements of Fed. R. Civ. P. 23(b)(3) in that
6 there are questions of law and fact common to the members of the Class
7 that predominate over any questions affecting only individual members,
8 and that a class action is superior to other available methods for the fair
9 and efficient adjudication of the controversy.
10

11 4. Solely for the purposes of effectuating the Settlement, the Court finds that Lead
12 Plaintiff Andrey Slomnitsky possesses claims that are typical of the claims of Class Members and
13 that he has and will adequately represent the interest of Class Members, and the Court appoints
14 him as the representatives of the Class and appoints Lead Counsel, Brower Piven, A Professional
15 Corporation, as counsel for the Class.
16

17 5. If for any reason the Settlement does not receive Final Court Approval, the
18 Stipulation, including any amendment(s) thereof, and this Order certifying the Class solely for
19 purposes of the Settlement shall, without the need for further action by the Court or any of the
20 Lead Plaintiff and Defendants, be null and void, of no further force or effect, and without prejudice
21 to any party, and may not be introduced as evidence or referred to in any actions or proceedings
22 by any person or entity. Each party shall be restored to his, her or its respective position as it
23 existed as of October 10, 2019. In such circumstances, each of the parties shall retain its currently
24 existing rights to seek or to object to the certification of this litigation as a class action under Fed.
25 R. Civ. P. 23, or any state or federal rule, statute, law, or provision, and to contest and appeal any
26
27
28

1 grant or denial of certification in this litigation or in any other litigation on any other grounds.

2 6. A hearing (“Settlement Hearing”) shall be held before this Court on
3 Monday, November 16, 2020, at 10:00 a.m. (Pacific) for the following purposes:

- 4 (a) to determine whether the Court should grant final certification to the Class
5 pursuant to Fed. R. Civ. P. 23(a) and (b)(3);
6
7 (b) to determine whether the proposed Settlement of the Action on the terms
8 and conditions provided for in the Stipulation is fair, reasonable, and
9 adequate to the Class and should be approved by the Court;
10
11 (c) to determine whether a Judgment should be entered;
12
13 (d) to determine whether the proposed Plan of Allocation for the proceeds of
14 the Settlement is fair and reasonable, and should be approved by the Court;
15
16 (e) to determine whether any applications by Lead Counsel for an award of
17 attorneys’ fees and/or litigation expenses should be approved;
18
19 (f) to determine whether an award of reasonable costs and expenses to Lead
20 Plaintiff directly relating to his representation of the Class should be
21 approved; and
22
23 (g) to rule upon such other matters as the Court may deem appropriate.

24 7. The Court approves, as to form and content, the Notice of Pendency and Proposed
25 Settlement of Class Action (the “Notice”), the Proof of Claim and Release form (the “Proof of
26 Claim”), and the Summary Notice of Proposed Settlement of Class Action (the “Summary
27 Notice”) for publication, annexed as Exhibits 1-3 hereto, and finds that the mailing and distribution
28 of the Notice and publishing of the Summary Notice in the manner and form set forth in this Order
meet the requirements of Fed. R. Civ. P. 23, the Securities Exchange Act of 1934, 15 U.S.C. §78u-

1 4(a)(7), as amended, including the Private Securities Litigation Reform Act of 1995, and due
2 process, and is the best notice practicable under the circumstances, and shall constitute due and
3 sufficient notice to all Persons and entities entitled to notice.

4 8. Defendants are required to serve the notice required under the Class Action Fairness
5 Act of 2005, 28 U.S.C. §1715 et seq. ("CAFA") no later than ten (10) calendar days following the
6 filing of the Stipulation with the Court. Counsel for Defendants shall, at or before the Final
7 Approval Hearing, file with the Court proof of compliance with CAFA.

8 9. Epiq Class Action and Claims Solutions, Inc. ("Claims Administrator") is hereby
9 appointed, under the supervision of Lead Counsel, to administer the notice procedure as well as
10 the processing of claims as more fully set forth below:

11 (a) With ten (10) business days after entry of the Preliminary Approval Order,
12 Defendants shall use their best efforts to provide the Claims Administrator, at no cost to Lead
13 Plaintiff or the Class, reasonably available transfer records in electronic searchable form, such as
14 Excel, containing the names and addresses of record holders who purchased Allied common stock
15 during the Class Period. It shall be solely Lead Counsel's responsibility to disseminate the Notice
16 and Summary Notice to the Class in accordance with this Stipulation and as ordered by the Court.
17 Class Members shall have no recourse as to the Released Defendant Parties with respect to any
18 claims they may have that arise from any failure of the notice process.

19 (b) No later than fifteen (15) business days after entry of this Order, the Claims
20 Administrator shall cause a copy of the Notice, substantially in the form annexed hereto as Exhibit
21 A-1 and Proof of Claim, substantially in the form annexed hereto as Exhibit 3, to be mailed by
22 first class mail to all potential Class Members who can be identified with reasonable effort;

23 (c) The Claims Administrator shall cause the Summary Notice, in substantially
24
25
26
27
28

1 the form annexed as Exhibit 3, to be published three (3) separate times, with no less than four (4)
2 business days between each publication, over the *PR Newswire* and/or similar national business-
3 oriented newswire(s), with such publication completed no later than twenty-eight (28) calendar
4 days after the mailing of the Notice; and

5 (d) No later than thirty (30) calendar days before the Settlement Hearing, Lead
6 Counsel shall cause proof, by affidavit or declaration, of such mailing and publishing to be filed
7 with the Court and served on Defendants' Counsel.
8

9 10. All banks, securities brokers and other nominees who purchased the common stock
10 of Allied for the beneficial ownership of Class Members during the Class Period shall send the
11 Notice to all beneficial owners of such Allied common stock within seven (7) calendar days after
12 receipt of the Notice from the Claims Administrator, or send a list of the names and addresses of
13 such beneficial owners to the Claims Administrator within seven (7) calendar days of receipt of
14 receipt of the Notice from the Claims Administrator, in which event the Claims Administrator shall
15 promptly mail the Notice to such beneficial owners. The Claims Administrator shall, if requested,
16 reimburse banks, brokerage houses or other nominees solely for their reasonable out-of-pocket
17 expenses incurred in providing notice to beneficial owners who are potential Class Members out
18 of the Settlement Fund, which expenses would not have been incurred except for the sending of
19 such Notice, subject to further order of this Court with respect to any dispute concerning such
20 compensation.
21

22 11. In order to be entitled to participate in the Net Settlement Fund, in the event the
23 Settlement is effected in accordance with the terms and conditions set forth in the Stipulation, each
24 Class Member shall take the following actions and be subject to the following conditions:
25

26 (a) A properly executed Proof of Claim, substantially in the form attached to
27
28

1 the Notice, must be submitted to the Claims Administrator, at the Post Office Box indicated in the
2 Notice, postmarked or delivered no later than one hundred and fifty (150) calendar days after entry
3 of this Order. Such deadline may be further extended by Court Order. Each Proof of Claim shall
4 be deemed to have been submitted when postmarked (if properly addressed and mailed by first
5 class mail, postage prepaid) provided such Proof of Claim is actually received prior to the motion
6 for an order of the Court approving distribution of the Net Settlement Fund. Any Proof of Claim
7 submitted in any other manner shall be deemed to have been submitted when it was actually
8 received at the address designated in the Notice. Any Class Member who does not submit a Proof
9 of Claim within the time provided for shall be barred from sharing in the distribution of the
10 proceeds of the Net Settlement Fund, unless otherwise ordered by the Court, but shall in other
11 respects be bound by the terms of the Stipulation. Notwithstanding the foregoing, Lead Counsel
12 shall have discretion to accept late-submitted claims for processing by the Claims Administrator
13 so long as the distribution of the Net Settlement Fund is not materially delayed thereby.
14
15

16 (b) The Proof of Claim submitted by each Class Member must satisfy the
17 following conditions: (i) it must be properly completed, signed and submitted in a timely manner
18 in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by
19 adequate supporting documentation as are specified in the Proof of Claim and as are reasonably
20 available to the Authorized Claimant for the transactions reported therein, in the form of broker
21 confirmation slips, broker account statements, an authorized statement from the broker containing
22 the transactional information found in a broker confirmation slip, or such other documentation as
23 is deemed adequate by Lead Counsel; (iii) if the person executing the Proof of Claim is acting in
24 a representative capacity, a certification of his current authority to act on behalf of the Class
25 Member must be included in the Proof of Claim; and (iv) the Proof of Claim must be complete
26
27
28

1 and contain no material deletions or modifications of any of the printed matter contained therein
2 and must be signed under penalty of perjury.

3 (c) As part of the Proof of Claim, each Class Member shall submit to the
4 jurisdiction of the Court with respect to the claim submitted and shall (subject to effectuation of
5 the Settlement) release all Released Claims as provided in the Stipulation.
6

7 12. All Class Members shall be bound by all determinations and judgments in this
8 Action, concerning the Settlement, including but not limited to the releases provided for in the
9 Stipulation, whether favorable or unfavorable, except those who are found by the Court to have
10 previously timely and validly requested exclusion from the Class. The Persons who request
11 exclusion from the Class will be excluded from the Class and shall have no rights under the
12 Stipulation, shall not be entitled to submit any Proof of Claim forms, shall not share in the
13 distribution of the Net Settlement Fund as described in the Stipulation and in the Notice, and shall
14 not be bound by the Stipulation or the Judgment entered as to the Defendants in the Action.
15

16 13. To request exclusion from the Class, a putative Class Member must send a letter,
17 postmarked or delivered, no later than one hundred and ten (110) calendar days after entry of this
18 Order to the Claims Administrator. For a request for exclusion to be valid, the putative Class
19 Member's request for exclusion must include the Class Member's name, current address, and day-
20 time and evening telephone numbers; the dates of all such Class Member's purchases and/or sales
21 of Allied common stock during the Class Period; the number of shares purchased and/or sold on
22 each such date; the prices paid and/or received for all such shares on each such date; and a clear
23 and unambiguous statement that such putative Class Member wishes to be excluded from the
24 Class. No further opportunity to request exclusion will be given in this Action. A Class Member's
25 failure to comply with the foregoing requirements for requesting exclusion from the Class will
26
27
28

1 result in such request being invalid and ineffective.

2 14. Lead Counsel shall promptly provide Defendants' Counsel copies of all requests
3 for exclusion.

4 15. Pending final determination of whether the Stipulation should be approved, Lead
5 Counsel, Lead Plaintiff, and Class Members are barred and enjoined from commencing or
6 prosecuting any action asserting any Released Claims against any Released Defendant Party and
7 all proceedings in the Action shall be stayed until further order of this Court, except as may be
8 necessary to comply with the terms of the Stipulation, or implement the Settlement.
9

10 16. Any Class Member may enter an appearance in the Action, individually or, at their
11 own expense, through counsel of their own choice, in which case such counsel must file with the
12 Clerk of the Court and deliver to Lead Counsel and Defendants' Counsel a notice of such
13 appearance no later than one hundred and five (105) calendar days after entry of this Order. If they
14 do not enter an appearance, they will be represented by Lead Counsel.
15

16 17. All papers in support of the Settlement, the Plan of Allocation, Lead Counsel's
17 application for an award of attorneys' fees and reimbursement of litigation expenses to Lead
18 Plaintiff's Counsel, and Lead Plaintiff's request for an award for reasonable costs and expenses
19 shall be filed no later than seventy-five (75) calendar days after entry of this Order.
20

21 18. Any Class Member may appear and show cause, if he, she, or it has any, why the
22 proposed Settlement should not be approved as fair, reasonable, and adequate, why the Plan of
23 Allocation should not be approved as fair and equitable, why Lead Counsel's application for an
24 award of attorneys' fees and/or why Lead Counsel's application for an order reimbursing litigation
25 expenses should not be granted, and/or why Lead Plaintiff's request for an award for reasonable
26 costs and expenses should not be granted; provided, however, that no Person or entity shall be
27
28

1 heard or entitled to contest such matters, unless that Person or entity has delivered by hand or sent
2 by first class mail written objections and copies of all papers and briefs any such Person and entity
3 wishes to submit in support of any such objection delivered or post-marked no later than one
4 hundred and ten (110) calendar days after entry of this Order to each of the following:

5 BROWER PIVEN
6 A Professional Corporation
7 Charles J. Piven
8 3704 North Charles Street, #1301
9 Baltimore, MD 21218

10 *Lead Counsel for the Class*

11 SULLIVAN & CROMWELL LLP
12 Robert A. Sacks
13 1888 Century Park East, Suite 2100
14 Los Angeles, CA 90067

15 *Defendants' Counsel*

16 Any Person that does not make his, her, or its objection in the manner provided in the Notice shall
17 be deemed to have waived such objection and shall forever be foreclosed from making any
18 objection to the fairness or adequacy of the proposed Settlement as set forth in the Stipulation,
19 unless otherwise ordered by the Court. Any papers in response to any such objections and/or in
20 further support of the above-noted motions shall be filed no later than ten (10) business days before
21 the Settlement Hearing.

22 19. All funds held by the Escrow Agent shall be deemed and considered to be *in*
23 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time
24 as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

25 20. All reasonable costs and expenses incurred in identifying and notifying Class
26 Members, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation.
27 In the event the Settlement is not approved by the Court, or otherwise fails to become effective,
28 neither the Lead Plaintiff nor Lead Counsel shall have any obligation to repay any amounts


1 reasonably incurred or disbursed pursuant to the Stipulation for costs and expenses of providing
2 notice and administration of the Settlement.

3 21. This Order, the Stipulation, and any of their terms, and all negotiations, discussions
4 and proceedings in connection with this Order and the Stipulation, shall not constitute evidence,
5 or an admission by any of the Defendants or the other Released Defendant Parties, that any acts of
6 wrongdoing have been committed and shall not be deemed to create any inference that there is any
7 liability on the part of any of the Defendants or any other Released Defendant Party. This Order,
8 the Stipulation, and any of their terms, and all negotiations, discussions and proceedings in
9 connection with this Order and the Stipulation, shall not be offered or received in evidence or used
10 for any other purpose in this or any other proceeding in any court, administrative agency,
11 arbitration tribunal, or other forum of any kind or character in the United States or any other
12 country except as necessary to enforce the terms of this Order and/or the Stipulation.
13
14

15 22. The Court reserves the right to adjourn the date of the Settlement Hearing without
16 further notice to Class Members and retains jurisdiction to consider all further applications arising
17 out of or connected with the proposed Settlement. The Court may approve the Settlement, with
18 such modifications as may be agreed to by the Lead Plaintiff and Defendants, if appropriate,
19 without further notice to the Class.
20

21 IT IS SO ORDERED.

22
23 DATED: 6/10/20



The Honorable Larry R. Hicks
United States District Judge
District of Nevada